

MAR 17 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OSCAR HERBERTO ORTEGA-
QUIROZ,

Defendant - Appellant.

No. 05-10006

D.C. No. CR-03-00241-KJD

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Oscar Herberto Ortega-Quiroz appeals the sentence imposed following his guilty plea to being a deported alien found in the United States in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

Ortega-Quiroz contends that the district court violated the Sixth Amendment by considering the “fact” of a prior state conviction that he neither admitted nor was found to exist by a jury beyond a reasonable doubt. This contention is without merit. We have continued to hold after *Dretke v. Haley*, 541 U.S. 386 (2004), *Blakely v. Washington*, 542 U.S. 296 (2004), *Shepard v. United States*, 544 U.S. 13 (2005), and *United States v. Booker*, 543 U.S. 220 (2005), that enhancements under U.S.S.G. § 2L1.2 do not implicate the Sixth Amendment. See *United States v. Moreno-Hernandez*, 419 F.3d 906, 914 n. 8 (9th Cir. 2005) (rejecting Blakely/Booker challenge to enhancement under § 2L1.2(b)(A)(ii)); see also *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that we continue to be bound by the Supreme Court's holding in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), that a district court may enhance a sentence on the basis of prior convictions, even if the fact of those convictions was not found by a jury beyond a reasonable doubt).

Because the district court sentenced Ortega-Quiroz under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether any error in the imposition of the sentence under the then-mandatory Sentencing Guidelines was harmless, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See Moreno-Hernandez*, 419 F.3d at 916.

REMANDED.